

COLLINS) was added as a cosponsor of S. 3038, a bill to amend part E of title IV of the Social Security Act to extend the adoption incentives program, to authorize States to establish a relative guardianship program, to promote the adoption of children with special needs, and for other purposes.

S. 3086

At the request of Mr. DURBIN, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 3086, a bill to amend the antitrust laws to ensure competitive market-based fees and terms for merchants' access to electronic payment systems.

S. 3118

At the request of Mr. GRASSLEY, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 3118, a bill to amend titles XVIII and XIX of the Social Security Act to preserve beneficiary access to care by preventing a reduction in the Medicare physician fee schedule, to improve the quality of care by advancing value based purchasing, electronic health records, and electronic prescribing, and to maintain and improve access to care in rural areas, and for other purposes.

S. 3130

At the request of Mr. DURBIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 3130, a bill to provide energy price relief by authorizing greater resources and authority for the Commodity Futures Trading Commission, and for other purposes.

S.J. RES. 2

At the request of Mr. VITTER, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S.J. Res. 2, a joint resolution proposing an amendment to the Constitution of the United States relative to limiting the number of terms that a Member of Congress may serve.

S.J. RES. 37

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S.J. Res. 37, a joint resolution expressing the sense of Congress that the United States should sign the Declaration of the Oslo Conference on Cluster Munitions and future instruments banning cluster munitions that cause unacceptable harm to civilians.

S. CON. RES. 88

At the request of Mr. CORNYN, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. Con. Res. 88, a concurrent resolution expressing the sense of Congress that the Food and Drug Administration's (FDA) new policy restricting women's access to medications containing estriol does not serve the public interest.

S. RES. 584

At the request of Mr. DURBIN, the names of the Senator from California (Mrs. BOXER), the Senator from Ohio (Mr. BROWN), the Senator from

Vermont (Mr. LEAHY), the Senator from New York (Mr. SCHUMER), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maryland (Mr. CARDIN), the Senator from Missouri (Mrs. MCCASKILL), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. Res. 584, a resolution recognizing the historical significance of Juneteenth Independence Day and expressing the sense of the Senate that history should be regarded as a means for understanding the past and solving the challenges of the future.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Ms. STABENOW, Mr. VOINOVICH, Mr. SALAZAR, Mr. ROBERTS, Mr. BROWN, Mr. SMITH, Mr. CASEY, Ms. COLLINS, Mr. LEVIN, Mrs. DOLE, Mr. LIEBERMAN, Mr. ISAKSON, Mr. WYDEN, Mr. BURR, Mr. DODD, Ms. SNOWE, Mr. SANDERS, Mr. HATCH, Ms. CANTWELL, Mr. CARDIN, Mr. SCHUMER, Mrs. CLINTON, Ms. MIKULSKI, and Mrs. LINCOLN):

S. 3144. A bill to amend part B of title XVIII of the Social Security Act to delay and reform the Medicare competitive acquisition program for purchase of durable medical equipment, prosthetics, orthotics, and supplies; to the Committee on Finance.

Mr. BAUCUS, Mr. President, today I introduce, with my friend Senator GRASSLEY and twenty-four other Democratic and Republican Senators, the Medicare DMEPOS Competitive Acquisition Reform Act of 2008. In doing so, I would also like to recognize the efforts of Congressman PETE STARK, Congressman DAVE CAMP, and so many others in the House of Representatives who worked very hard on this bipartisan legislation.

This legislation will delay the durable medical equipment, prosthetics, orthotics, and supplies competitive acquisition program. Many Members of Congress and I have received reports about potential inaccuracies in the implementation of the CAP program. These reports range from suppliers who believe they were wrongly disqualified to questions about the clarity and consistency of information that suppliers received during the bidding process. Some providers were awarded contracts to serve areas in which they did not previously have a presence. Other suppliers were awarded contracts for service lines with which they have little or no experience.

While I support the concept of competitive bidding as a way to decrease costs, it is the obligation of Congress to make sure that these savings are not at the expense of beneficiary access to the care that they need in their own

communities. I believe that Congress should take a closer look to make sure this program lives up to its potential.

In order to ensure that we are getting the best possible price and quality for beneficiaries, it is critical that the competitive bidding process be accurate and inclusive. I am most concerned about the impact that a poorly designed program will have on Medicare beneficiaries, many of whom are confused about what this new program means for them and are concerned that they won't be able to get care from someone in their own community.

This means we must have as many bidders as possible who offer not only the best price but clearly meet high quality standards. Based upon the numbers we have seen as a result of bidding in phase one, I think we need to look more closely to make sure that we are not missing an opportunity to consider additional suppliers who have experience furnishing these services in the communities at play. Furthermore, we need to examine the bidding process outcomes to make sure that the suppliers being offered contracts to serve patients in a selected area have the team on the ground to help patients in those areas.

I have also heard concerns that some of the products included in the first phase of the competitive acquisition program may not be the best fit for this type of program because they require specialized handling or expertise. At the end of the day, the most important goal of the Medicare program is to make sure patients get the care that is appropriate for them, so we must tread carefully when we move ahead with a program covering these products.

The Centers for Medicare and Medicaid Services put forth an admirable effort to implement a complex competitive bidding program in a short time frame. I think that many of the concerns that people have raised about the program can be resolved, but we cannot afford to ignore them. The beneficiary services at stake are just too important to move hastily; no matter how much money we believe we can save.

I think that it is worth it for us to delay for just a bit and take a closer look to make sure this program lives up to its potential. With a few minor tweaks here and there, I am convinced that the competitive acquisition program will live up to its promise to provide cost effective, high-quality services and products to patients.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text was ordered to be printed in the RECORD, as follows:

S. 3144

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare DMEPOS Competitive Acquisition Reform Act of 2008".

## SEC. 2. DELAY IN AND REFORM OF MEDICARE DMEPOS COMPETITIVE ACQUISITION PROGRAM.

### (a) TEMPORARY DELAY AND REFORM.—

(1) IN GENERAL.—Section 1847(a)(1) of the Social Security Act (42 U.S.C. 1395w–3(a)(1)) is amended—

#### (A) in paragraph (1)—

(i) in subparagraph (B)(i), in the matter before subclause (I), by inserting “consistent with subparagraph (D)” after “in a manner”;

(ii) in subparagraph (B)(i)(II), by striking “80” and “in 2009” and inserting “an additional 70” and “in 2011”, respectively;

(iii) in subparagraph (B)(i)(III), by striking “after 2009” and inserting “after 2011 (or, in the case of national mail order for items and services, after 2010)”;

(iv) by adding at the end the following new subparagraphs:

#### “(D) CHANGES IN COMPETITIVE ACQUISITION PROGRAMS.—

“(i) ROUND 1 OF COMPETITIVE ACQUISITION PROGRAM.—Notwithstanding subparagraph (B)(i)(I) and in implementing the first round of the competitive acquisition programs under this section—

“(I) the contracts awarded under this section before the date of the enactment of this subparagraph are terminated, no payment shall be made under this title on or after the date of the enactment of this subparagraph based on such a contract, and, to the extent that any damages may be applicable as a result of the termination of such contracts, such damages shall be payable from the Federal Supplementary Medical Insurance Trust Fund under section 1841;

“(II) the Secretary shall conduct the competition for such round in a manner so that it occurs in 2009 with respect to the same items and services and the same areas, except as provided in subclauses (III) and (IV);

“(III) the Secretary shall exclude Puerto Rico so that such round of competition covers 9, instead of 10, of the largest metropolitan statistical areas; and

“(IV) there shall be excluded negative pressure wound therapy items and services. Nothing in subclause (I) shall be construed to provide an independent cause of action or right to administrative or judicial review with regard to the termination provided under such subclause.

“(ii) ROUND 2 OF COMPETITIVE ACQUISITION PROGRAM.—In implementing the second round of the competitive acquisition programs under this section described in subparagraph (B)(i)(II)—

“(I) the metropolitan statistical areas to be included shall be those metropolitan statistical areas selected by the Secretary for such round as of June 1, 2008; and

“(II) the Secretary may subdivide metropolitan statistical areas with populations (based upon the most recent data from the Census Bureau) of at least 8,000,000 into separate areas for competitive acquisition purposes.

“(iii) EXCLUSION OF CERTAIN AREAS IN SUBSEQUENT ROUNDS OF COMPETITIVE ACQUISITION PROGRAMS.—In implementing subsequent rounds of the competitive acquisition programs under this section, including under subparagraph (B)(i)(III), for competitions occurring before 2015, the Secretary shall exempt from the competitive acquisition program (other than national mail order) the following:

“(I) Rural areas.

“(II) Metropolitan statistical areas not selected under round 1 or round 2 with a population of less than 250,000.

“(III) Areas with a low population density within a metropolitan statistical area that is otherwise selected, as determined for purposes of paragraph (3)(A).

“(E) VERIFICATION BY OIG.—The Inspector General of the Department of Health and Human Services shall, through post-award audit, survey, or otherwise, assess the process used by the Centers for Medicare & Medicaid Services to conduct competitive bidding and subsequent pricing determinations under this section that are the basis for pivotal bid amounts and single payment amounts for items and services in competitive bidding areas under rounds 1 and 2 of the competitive acquisition programs under this section and may continue to verify such calculations for subsequent rounds of such programs.

#### “(F) SUPPLIER FEEDBACK ON MISSING FINANCIAL DOCUMENTATION.—

“(i) IN GENERAL.—In the case of a bid where one or more covered documents in connection with such bid have been submitted not later than the covered document review date specified in clause (ii), the Secretary—

“(I) shall provide, by not later than 45 days (in the case of the first round of the competitive acquisition programs as described in subparagraph (B)(i)(I)) or 90 days (in the case of a subsequent round of such programs) after the covered document review date, for notice to the bidder of all such documents that are missing as of the covered document review date; and

“(II) may not reject the bid on the basis that any covered document is missing or has not been submitted on a timely basis, if all such missing documents identified in the notice provided to the bidder under subclause (I) are submitted to the Secretary not later than 10 business days after the date of such notice.

“(ii) COVERED DOCUMENT REVIEW DATE.—The covered document review date specified in this clause with respect to a competitive acquisition program is the later of—

“(I) the date that is 30 days before the final date specified by the Secretary for submission of bids under such program; or

“(II) the date that is 30 days after the first date specified by the Secretary for submission of bids under such program.

“(iii) LIMITATIONS OF PROCESS.—The process provided under this subparagraph—

“(I) applies only to the timely submission of covered documents;

“(II) does not apply to any determination as to the accuracy or completeness of covered documents submitted or whether such documents meet applicable requirements;

“(III) shall not prevent the Secretary from rejecting a bid based on any basis not described in clause (i)(II); and

“(IV) shall not be construed as permitting a bidder to change bidding amounts or to make other changes in a bid submission.

“(iv) COVERED DOCUMENT DEFINED.—In this subparagraph, the term ‘covered document’ means a financial, tax, or other document required to be submitted by a bidder as part of an original bid submission under a competitive acquisition program in order to meet required financial standards. Such term does not include other documents, such as the bid itself or accreditation documentation.”; and

(B) in paragraph (2)(A), by inserting before the period at the end the following: “and excluding certain complex rehabilitative power wheelchairs recognized by the Secretary as classified within group 3 or higher (and related accessories when furnished in connection with such wheelchairs)”.

#### (2) BUDGET NEUTRAL OFFSET.—

(A) IN GENERAL.—Section 1834(a)(14) of such Act (42 U.S.C. 1395m(a)(14)) is amended—

(i) by striking “and” at the end of subparagraphs (H) and (I);

(ii) by redesignating subparagraph (J) as subparagraph (M); and

(iii) by inserting after subparagraph (I) the following new subparagraphs:

“(J) for 2009—

“(i) in the case of items and services furnished in any geographic area, if such items or services were selected for competitive acquisition in any area under the competitive acquisition program under section 1847(a)(1)(B)(i)(I) before July 1, 2008, including diabetic supplies but only if furnished through mail order, –9.5 percent; or

“(ii) in the case of other items and services, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2008;

“(K) for 2010, 2011, 2012, and 2013, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year;

“(L) for 2014—

“(i) in the case of items and services described in subparagraph (J)(i) for which a payment adjustment has not been made under subsection (a)(1)(F)(ii) in any previous year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2013, plus 2.0 percentage points; or

“(ii) in the case of other items and services, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2013; and”.

(B) CONFORMING TREATMENT FOR CERTAIN ITEMS AND SERVICES.—The second sentence of section 1842(s)(1) of such Act (42 U.S.C. 1395u(s)(1)) is amended by striking “except that” and all that follows and inserting the following: “except that for items and services described in paragraph (2)(D)—

“(A) for 2009 section 1834(a)(14)(J)(i) shall apply under this paragraph instead of the percentage increase otherwise applicable; and

“(B) for 2014, if subparagraph (A) applied to the items and services and there has not been a payment adjustment under subsection (h)(1)(H) for the items and services for any previous year, the percentage increase computed under section 1834(a)(14)(L)(i) shall apply instead of the percentage increase otherwise applicable.”.

(3) CONFORMING DELAY.—Subsections (a)(1)(F) and (h)(1)(H) of section 1834 of the Social Security Act (42 U.S.C. 1395m) are each amended by striking “January 1, 2009” and inserting “January 1, 2011”.

(4) CONSIDERATIONS IN APPLICATION.—Section 1834 of such Act (42 U.S.C. 1395m) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (F), by inserting “subject to subparagraph (G),” before “that are included”; and

(ii) by adding at the end the following new subparagraph:

“(G) USE OF INFORMATION ON COMPETITIVE BID RATES.—The Secretary shall specify by regulation the methodology to be used in applying the provisions of subparagraph (F)(ii) and subsection (h)(1)(H)(ii). In promulgating such regulation, the Secretary shall consider the costs of items and services in areas in which such provisions would be applied compared to the payment rates for such items and services in competitive acquisition areas.”; and

(B) in subsection (h)(1)(H), by inserting “subject to subsection (a)(1)(G),” before “that are included”.

(b) QUALITY STANDARDS.—

(1) APPLICATION OF ACCREDITATION REQUIREMENT.—

(A) IN GENERAL.—Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)) is amended—

(i) in subparagraph (E), by inserting “including subparagraph (F),” after “under this paragraph,”; and

(ii) by adding at the end the following new subparagraph:

“(F) APPLICATION OF ACCREDITATION REQUIREMENT.—In implementing quality standards under this paragraph—

“(i) subject to clause (ii), the Secretary shall require suppliers furnishing items and services described in subparagraph (D) on or after October 1, 2009, directly or as a subcontractor for another entity, to have submitted to the Secretary evidence of accreditation by an accreditation organization designated under subparagraph (B) as meeting applicable quality standards; and

“(ii) in applying such standards and the accreditation requirement of clause (i) with respect to eligible professionals (as defined in section 1848(k)(3)(B)), and including such other persons, such as orthotists and prosthetists, as specified by the Secretary, furnishing such items and services—

“(I) such standards and accreditation requirement shall not apply to such professionals and persons unless the Secretary determines that the standards being applied are designed specifically to be applied to such professionals and persons; and

“(II) the Secretary may exempt such professionals and persons from such standards and requirement if the Secretary determines that licensing, accreditation, or other mandatory quality requirements apply to such professionals and persons with respect to the furnishing of such items and services.”

(B) CONSTRUCTION.—Section 1834(a)(20)(F) (ii) of the Social Security Act, as added by subparagraph (A), shall not be construed as preventing the Secretary of Health and Human Services from implementing the first round of competition under section 1847 of such Act on a timely basis.

(2) DISCLOSURE OF SUBCONTRACTORS UNDER COMPETITIVE ACQUISITION PROGRAM.—Section 1847(b)(3) of such Act (42 U.S.C. 1395w-3(b)(3)) is amended by adding at the end the following new subparagraph:

“(C) DISCLOSURE OF SUBCONTRACTORS.—

“(i) INITIAL DISCLOSURE.—Not later than 10 days after the date a supplier enters into a contract with the Secretary under this section, such supplier shall disclose to the Secretary, in a form and manner specified by the Secretary, the information on—

“(I) each subcontracting relationship that such supplier has in furnishing items and services under the contract; and

“(II) whether each such subcontractor meets the requirement of section 1834(a)(20)(F)(i), if applicable to such subcontractor.

“(ii) SUBSEQUENT DISCLOSURE.—Not later than 10 days after such a supplier subsequently enters into a subcontracting relationship described in clause (i)(II), such supplier shall disclose to the Secretary, in such form and manner, the information described in subclauses (I) and (II) of clause (i).”

(3) COMPETITIVE ACQUISITION OMBUDSMAN.—Such section is further amended by adding at the end the following new subsection:

“(f) COMPETITIVE ACQUISITION OMBUDSMAN.—The Secretary shall provide for a competitive acquisition ombudsman within the Centers for Medicare & Medicaid Services in order to respond to complaints and inquiries made by suppliers and individuals relating to the application of the competitive acquisition program under this section. The ombudsman may be within the office of the Medicare Beneficiary Ombudsman appointed under section 1808(c). The ombudsman shall submit to Congress an annual report on the activities under this subsection, which report shall be coordinated with the report provided under section 1808(c)(2)(C).”

(c) CHANGE IN REPORTS AND DEADLINES.—

(1) GAO REPORT.—Section 302(b)(3) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173) is amended—

(A) in subparagraph (A)—

(i) by inserting “and as amended by section 2 of the Medicare DMEPOS Competitive Acquisition Reform Act of 2008” after “as amended by paragraph (1)”; and

(ii) by inserting before the period at the end the following: “and the topics specified in subparagraph (C)”;

(B) in subparagraph (B), by striking “Not later than January 1, 2009,” and inserting “Not later than 1 year after the first date that payments are made under section 1847 of the Social Security Act.”; and

(C) by adding at the end the following new subparagraph:

“(C) TOPICS.—The topics specified in this subparagraph, for the study under subparagraph (A) concerning the competitive acquisition program, are the following:

“(i) Beneficiary access to items and services under the program, including the impact on such access of awarding contracts to bidders that—

“(I) did not have a physical presence in an area where they received a contract; or

“(II) had no previous experience providing the product category they were contracted to provide.

“(ii) Beneficiary satisfaction with the program and cost savings to beneficiaries under the program.

“(iii) Costs to suppliers of participating in the program and recommendations about ways to reduce those costs without compromising quality standards or savings to the Medicare program.

“(iv) Impact of the program on small business suppliers.

“(v) Analysis of the impact on utilization of different items and services paid within the same Healthcare Common Procedure Coding System (HCPCS) code.

“(vi) Costs to the Centers for Medicare & Medicaid Services, including payments made to contractors, for administering the program compared with administration of a fee schedule, in comparison with the relative savings of the program.

“(vii) Impact on access, Medicare spending, and beneficiary spending of any difference in treatment for diabetic testing supplies depending on how such supplies are furnished.

“(viii) Such other topics as the Comptroller General determines to be appropriate.”

(2) DELAY IN OTHER DEADLINES.—

(A) PROGRAM ADVISORY AND OVERSIGHT COMMITTEE.—Section 1847(c)(5) of the Social Security Act (42 U.S.C. 1395w-3(c)(5)) is amended by striking “December 31, 2009” and inserting “December 31, 2011”.

(B) SECRETARIAL REPORT.—Section 1847(d) of such Act (42 U.S.C. 1395w-3(d)) is amended by striking “July 1, 2009” and inserting “July 1, 2011”.

(C) IG REPORT.—Section 302(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173) is amended by striking “July 1, 2009” and inserting “July 1, 2011”.

(3) EVALUATION OF CERTAIN CODE.—The Secretary of Health and Human Services shall evaluate the existing Healthcare Common Procedure Coding System (HCPCS) code for negative pressure wound therapy to ensure accurate reporting and billing for items and services under such code. In carrying out such evaluation, the Secretary shall use the existing process for the consideration of coding changes and consider all relevant studies and information furnished pursuant to such process.

(d) OTHER PROVISIONS.—

(1) EXEMPTION FROM COMPETITIVE ACQUISITION FOR CERTAIN OFF-THE-SHELF ORTHOTICS.—Section 1847(a) of the Social Security Act (42 U.S.C. 1395w-3(a)) is amended by adding at the end the following new paragraph:

“(7) EXEMPTION FROM COMPETITIVE ACQUISITION.—The programs under this section shall not apply to the following:

“(A) CERTAIN OFF-THE-SHELF ORTHOTICS.—Items and services described in paragraph (2)(C) if furnished—

“(i) by a physician or other practitioner (as defined by the Secretary) to the physician's or practitioner's own patients as part of the physician's or practitioner's professional service; or

“(ii) by a hospital to the hospital's own patients during an admission or on the date of discharge.

(B) CERTAIN DURABLE MEDICAL EQUIPMENT.—Those items and services described in paragraph (2)(A)—

“(i) that are furnished by a hospital to the hospital's own patients during an admission or on the date of discharge; and

“(ii) to which such programs would not apply, as specified by the Secretary, if furnished by a physician to the physician's own patients as part of the physician's professional service.”

(2) CORRECTION IN FACE-TO-FACE EXAMINATION REQUIREMENT.—Section 1834(a)(1)(E)(ii) of such Act (42 U.S.C. 1395m(a)(1)(E)(ii)) is amended by striking “1861(r)(1)” and inserting “1861(r)”.

(3) SPECIAL RULE IN CASE OF NATIONAL MAIL-ORDER COMPETITION FOR DIABETIC TESTING STRIPS.—Section 1847(b) of such Act (42 U.S.C. 1395w-3(b)) is amended—

(A) by redesignating paragraph (10) as paragraph (11); and

(B) by inserting after paragraph (9) the following new paragraph:

“(10) SPECIAL RULE IN CASE OF COMPETITION FOR DIABETIC TESTING STRIPS.—

“(A) IN GENERAL.—With respect to the competitive acquisition program for diabetic testing strips conducted after the first round of the competitive acquisition programs, if an entity does not demonstrate to the Secretary that its bid covers types of diabetic testing strip products that, in the aggregate and taking into account volume for the different products, cover 50 percent (or such higher percentage as the Secretary may specify) of all such types of products, the Secretary shall reject such bid. The volume for such types of products may be determined in accordance with such data (which may be market based data) as the Secretary recognizes.

“(B) STUDY OF TYPES OF TESTING STRIP PRODUCTS.—Before 2011, the Inspector General of the Department of Health and Human Services shall conduct a study to determine the types of diabetic testing strip products by volume that could be used to make determinations pursuant to subparagraph (A) for the first competition under the competitive acquisition program described in such subparagraph and submit to the Secretary a report on the results of the study. The Inspector General shall also conduct such a study and submit such a report before the Secretary conducts a subsequent competitive acquisition program described in subparagraph (A).”

(4) OTHER CONFORMING AMENDMENTS.—Section 1847(b)(11) of such Act, as redesignated by paragraph (3), is amended—

(A) in subparagraph (C), by inserting “and the identification of areas under subsection (a)(1)(D)(iii)” after “(a)(1)(A)”;

(B) in subparagraph (D), by inserting “and implementation of subsection (a)(1)(D)” after “(a)(1)(B)”;

(C) in subparagraph (E), by striking “or” at the end;

(D) in subparagraph (F), by striking the period at the end and inserting “; or”; and

(E) by adding at the end the following new subparagraph:

“(G) the implementation of the special rule described in paragraph (10).”

(5) FUNDING FOR IMPLEMENTATION.—In addition to funds otherwise available, for purposes of implementing the provisions of, and amendments made by, this section, other than the amendment made by subsection (c)(1) and other than section 1847(a)(1)(E) of the Social Security Act, the Secretary of Health and Human Services shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395t) to the Centers for Medicare & Medicaid Services Program Management Account of \$20,000,000 for fiscal year 2008, and \$25,000,000 for each of fiscal years 2009 through 2012. Amounts transferred under this paragraph for a fiscal year shall be available until expended.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as of June 30, 2008.

Mr. GRASSLEY. Mr. President, I am pleased to introduce the Medicare DMEPOS Competitive Acquisition Reform Act of 2008 with my colleague, Senator BAUCUS, to delay and reform the competitive bidding program for Medicare durable medical equipment, prosthetics, orthotics, and supplies. We are introducing this legislation to address serious concerns that have arisen over implementation of the competitive bidding program which is set to take effect in certain areas of the country on July 1, 2008. The bill will delay the start of the competitive bidding program for 18 months and require the Centers for Medicare and Medicaid Services to review the program and address significant issues that have been raised regarding implementation of the program.

We must act now before the competitive bidding program takes effect. We must ensure that the frail elderly who depend on diabetic supplies, oxygen, and other medical equipment for life-threatening conditions will continue to have access to essential medical products and supplies which are vital to their daily lives. The continued viability of much of the home medical supply industry is in serious jeopardy as a result of flaws that surfaced in the program during the first round of competitive bidding. Many small home medical equipment suppliers are in danger of going out of business through no fault of their own if the competitive bidding program is implemented as planned. Losing a significant number of small suppliers from the home medical equipment industry would have severe, unintended adverse consequences on thousands of beneficiaries who need home medical equipment and supplies. If that were to occur, it would severely hamper access to essential medical equipment for an untold number of beneficiaries. It was due to these very concerns that I opposed competitive bidding for DME when it was under consideration in 2003. Now, my original

concerns, unfortunately, have become a reality, and urgent action by Congress is required.

These concerns are especially problematic right now in states such as Iowa in the Midwest which are already reeling from the disastrous floods and tornadoes we have experienced this past month. The loss of many more small businesses would be disastrous to beneficiaries whose access to needed medical supplies has already been severely limited, let alone the ripple effect this would inflict on local economies which have already been severely impacted by record floods which have harmed scores of businesses and cost hundreds of millions of dollars in damages.

We heard from many medical equipment suppliers that the rules of the competitive bidding program were unclear or were changed at the last minute, and that their bids were not considered. CMS has told us that roughly two-thirds of the bids submitted by suppliers were ultimately rejected for lack of proper documentation or other issues apart from price. This was done even though CMS had assured suppliers when the program began that they would be notified if their bids lacked the required documentation. Two weeks before the bidding closed, CMS abruptly decided they would not provide such notification. Appropriately, this bill terminates the contracts that were awarded under Round One and pays any applicable damages incurred as a result of the terminations, if any. In the future, the bill requires a more transparent process on the part of CMS. When Round One is re-bid, the bill requires CMS to provide feedback to suppliers with documentation issues or other problems and give them an opportunity to remedy the situation before their bids are thrown out and excluded from consideration.

As Ranking Member of the Senate Finance Committee, I am committed to ensuring that Medicare dollars are spent wisely and provide high quality products to seniors at the lowest possible cost. The program improvements required by this legislation will ensure more protections for beneficiaries and lead to lower prices and higher quality medical products while ensuring that beneficiaries will still have access to the medical equipment and supplies that they need. These improvements will also help prevent many small home medical equipment suppliers from going out of business due to a flawed bidding process which unfairly eliminated them from the Medicare program for three years.

In our bill, the cost of delaying the competitive bidding program and adding additional safeguards to the program would be fully paid for by the durable medical equipment industry. According to the Congressional Budget Office, the delay in implementing competitive bidding and the reforms to the program included in this bill will in-

crease Medicare spending by \$3.1 billion over 5 years. To offset the cost of the legislation, in 2009 those DME items subject to Round One of the program will not receive a CPI update, and payments for those items will be reduced by 9.5 percent. Items not subject to Round One will receive a CPI update in 2009, and all DME items will receive CPI updates in years 2010 through 2013. In 2014, those DME items which were subject to the 9.5 percent payment reduction in 2009 will receive an additional payment increase of two percent over the CPI unless they are covered by competitive bidding contracts then.

As is true in many sectors, the DME industry is given a bad name by a few bad apples that spoil the barrel. Unfortunately, we hear on a regular basis from the Office of Inspector General and the Justice Department that the DME industry continues to have far too many incidents of waste, fraud and abuse. The multi-agency Medicare Fraud Task Force formed last year has uncovered numerous examples of criminal behavior and successfully prosecuted dozens of fraudulent or non-existent DME suppliers in South Florida and elsewhere. In just over a year, the task force has brought more than 120 cases against nearly 200 defendants in South Florida alone who have been charged with a total of \$638 million in fraud. We must have stronger safeguards to ensure that companies who participate in competitive bidding are actual, legitimate companies that can provide the equipment and services they bid to provide. In addition, the Inspector General of the Department of Health and Human Services is required to assess the process used by CMS to conduct competitive bidding and verify the calculations of the pricing determinations used to determine the payment amounts for competitively bid items in Rounds One and Two.

This bill also includes standards which will lead to an improved competitive bidding program. Under the bill, all DME suppliers must be accredited and meet quality standards by October 2009. We also close a loophole that currently allows subcontractors to remain unaccredited. We heard many complaints about companies awarded contracts who had no presence in the competitively bid area and who then began to solicit subcontractors to assist in carrying out the terms of the contract they had been awarded. Under the current program, subcontractors do not need to meet accreditation standards. Our bill requires that every company that supplies DME in the Medicare program must meet accreditation standards, whether they are primary suppliers or subcontractors.

I urge my colleagues to support this legislation to delay the competitive bidding program in order to ensure seniors continued access to needed home medical equipment and supplies and to remedy flaws in the bidding process and make other necessary improvements in the competitive bidding program.